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8
9 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

10 In the Matter of

11 **MARK MCKEE**

12 Holder of License No. S012049
For the Practice of Pharmacy
13 In the State of Arizona

Board Case No. 09-0043-PHR

**CONSENT AGREEMENT
AND ORDER FOR SUSPENSION
AND PROBATION**

14
15 **RECITALS**

16 In the interest of a prompt and judicious settlement of this case, consistent with the
17 public interest, statutory requirements and the responsibilities of the Arizona State Board
18 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Mark McKee ("Respondent"),
19 holder of Pharmacist License Number S012049 in the State of Arizona, and the Board
20 enter into the following Recitals, Findings of Fact, Conclusions of Law and Order
21 ("Consent Agreement") as a final disposition of this matter.

22 1. Respondent has read and understands this Consent Agreement and has had
23 the opportunity to discuss this Consent Agreement with an attorney, or has waived the
24 opportunity to discuss this Consent Agreement with an attorney.
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1 2. Respondent understands that he has a right to a public administrative
2 hearing concerning the above-captioned matter, at which hearing he could present
3 evidence and cross examine witnesses. By entering into this Consent Agreement,
4 Respondent knowingly and voluntarily relinquishes all right to such an administrative
5 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or
6 any other administrative and/or judicial action, concerning the matters set forth herein.

7 3. Respondent affirmatively agrees that this Consent Agreement shall be
8 irrevocable.

9 4. Respondent understands that this Consent Agreement or any part of the
10 agreement may be considered in any future disciplinary action by the Board against him.

11 5. Respondent understands this Consent Agreement deals with Board
12 Complaint No. 3636 involving allegations of unprofessional conduct against Respondent.
13 The investigation into these allegations against Respondent shall be concluded upon the
14 Board's adoption of this Consent Agreement.

15 6. Respondent understands that this Consent Agreement does not constitute a
16 dismissal or resolution of any other matters currently pending before the Board, if any,
17 and does not constitute any waiver, express or implied, of the Board's statutory authority
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19 7. Respondent also understands that acceptance of this Consent Agreement
20 does not preclude any other agency, subdivision, or officer of this State from instituting
21 any other civil or criminal proceedings with respect to the conduct that is the subject of
22 this Consent Agreement.

23 8. Respondent acknowledges and agrees that, upon signing this Consent
24 Agreement and returning this document to the Board's Executive Director, he may not
25 revoke his acceptance of the Consent Agreement or make any modifications to the
26

1 document regardless of whether the Consent Agreement has been signed by the
2 Executive Director. Any modification to this original document is ineffective and void
3 unless mutually agreed by the parties in writing.

4 9. Respondent understands that the Consent Agreement shall not become
5 effective unless and until adopted by the Board and signed by its Executive Director.

6 10. If a court of competent jurisdiction rules that any part of this Consent
7 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
8 shall remain in full force and effect.

9 11. Respondent understands and agrees that if the Board does not adopt this
10 Consent Agreement, he will not assert as a defense that the Board's consideration of this
11 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

12 12. Respondent understands that this Consent Agreement is a public record that
13 may be publicly disseminated as a formal action of the Board and may be reported as
14 required by law to the National Practitioner Data Bank and the Healthcare Integrity and
15 Protection Data Bank.

16 13. Respondent understands that any violation of this Consent Agreement
17 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
18 1901.01(B)(20), -1927(A)(1).

19 ACCEPTED AND AGREED BY RESPONDENT

20 
21 Mark McKee

Dated: 3/20/09

22 Subscribed and sworn to before me in the County of Maricopa, State of Arizona,
23 this 20 day of March, 2009, by Mark McKee.



RANIA M HARB
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires August 12, 2010


NOTARY PUBLIC

My Commission expires: August 12, 2010

1 **FINDINGS OF FACT**

2 1. The Board is the duly constituted authority for licensing and regulating the
3 practice of pharmacy in the State of Arizona.

4 2. Respondent is the holder of license number S012049 to practice as a
5 pharmacist in the State of Arizona.

6 3. During all times relevant to these Findings, Respondent worked as a
7 pharmacist at Walgreens Pharmacy #3636 in Phoenix, Arizona (the "Pharmacy").

8 4. In October 2008, the Board received information from the Pharmacy that
9 Respondent had diverted Oxycontin for his personal use.

10 5. In a signed written statement on October 1, 2008, Respondent admitted to
11 diverting Oxycontin (oxycodone) by passing fraudulent prescriptions at the Pharmacy.
12 Respondent scanned the Oxycontin prescriptions into the cash register and modified the
13 prescription price to \$0.

14 6. In its investigation, the Pharmacy found 37 instances where Respondent
15 had modified the price for fraudulent prescriptions to \$0. The majority of the fraudulent
16 prescriptions involved Oxycontin, but other controlled substances were also included.

17 7. Oxycodone is a Schedule II controlled substance. A.R.S. § 36-
18 2513(A)(1)(xiv).

19 7. On October 10, 2008, Respondent began in-patient treatment. On
20 November 11, 2008, Respondent signed an agreement with Pharmacists Assisting
21 Pharmacists of Arizona ("PAPA").

22 **CONCLUSIONS OF LAW**

23 1. The Board possesses jurisdiction over the subject matter and over
24 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

1 2. Pursuant to A.R.S. § 32-1927(A)(1), the Board may discipline a pharmacist
2 who has engaged in unprofessional conduct.

3 3. Respondent's conduct, as described in the Findings of Fact, constitutes a
4 violation of A.R.S. § 13-1802(A)(1) (A person commits theft if, without lawful authority,
5 the person knowingly controls another person's property with the intent to deprive that
6 other person of such property).

7 4. Respondent's conduct, as described in the Findings of Fact, constitutes a
8 violation of A.R.S. § 13-3406(A)(1) (A person may not knowingly possess or use a
9 prescription-only drug unless the person obtains the prescription-only drug pursuant to a
10 valid prescription of a licensed prescriber). Furthermore, a person may not knowingly
11 obtain or procure the administration of a prescription-only drug by fraud, deceit,
12 misrepresentation or subterfuge. A.R.S. § 13-3406(A)(6). In either case, such illegal
13 acquisition, possession or procurement of a prescription-only drug is a class 1
14 misdemeanor. A.R.S. § 13-3406(B)(1).

15 5. Respondent's conduct, as described in the Findings of Fact, constitutes a
16 violation of A.R.S. § 36-2531(E) (A person shall not provide a false prescription for a
17 controlled substance or knowingly or intentionally acquire or obtain possession of a
18 controlled substance by means of forgery, fraud, deception or subterfuge, including the
19 forgery or falsification of a prescription). A person who violates A.R.S. § 36-2531(E) is
20 guilty of a class 4 felony.

21 6. Respondent's conduct, as described in the Findings of Fact, constitutes a
22 violation of A.R.S. § 32-1968(A) ("A prescription-only drug shall be dispensed only
23 under one of the following conditions: (1) By a medical practitioner in conformance with
24 A.R.S. § 32-1921; (2) On a written prescription order bearing the prescribing medical
25 practitioner's manual signature; (3) On an electronically transmitted prescription order
26

1 containing the prescribing medical practitioner's electronic or digital signature that is
2 reduced promptly to writing and filed by the pharmacist; (4) On a written prescription
3 order generated from electronic media containing the prescribing medical practitioner's
4 electronic or manual signature. A prescription order that contains only an electronic
5 signature must be applied to paper that uses security features that will ensure the
6 prescription order is not subject to any form of copying or alteration; (5) On an oral
7 prescription order that is reduced promptly to writing and filed by the pharmacist; (6) By
8 refilling any written, electronically transmitted or oral prescription order if a refill is
9 authorized by the prescriber either in the original prescription order, by an electronically
10 transmitted refill order that is documented promptly and filed by the pharmacist or by an
11 oral refill order that is documented promptly and filed by the pharmacist.")

12 7. The conduct and circumstances described above constitute a violation of
13 A.R.S. § 32-1965(8) (Making or offering to make a forged, counterfeit, altered or
14 photocopied prescription or drug order for the purpose of obtaining prescription-only or
15 controlled substance drugs).

16 8. The conduct and circumstances described above constitutes unprofessional
17 conduct pursuant to A.R.S. § 32-1901.01(B)(8) (Committing a felony, whether or not
18 involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-
19 related offense. In either case, conviction by a court of competent jurisdiction or a plea
20 of no contest is conclusive evidence of the commission).

21 9. The conduct and circumstances described above constitute unprofessional
22 conduct pursuant to A.R.S. § 32-1901.01(B)(10) (Violating a federal or state law or
23 administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous
24 drugs, controlled substances or precursor chemicals when determined by the board or by
25 conviction in a federal or state court).

10. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(11) (Knowingly dispensing a drug without a valid prescription order as required pursuant to section 32-1968, subsection A).

ORDER

Based upon the above Findings of Fact and Conclusions of Law, the Board issues the following Order:

1. Respondent's Pharmacist License No. S012049, which was issued to Respondent for the practice of Pharmacy in the State of Arizona, is hereby **SUSPENDED**, subject to the following terms and conditions:

A. Respondent's license is suspended for at least six (6) months from October 10, 2008, the date Respondent began inpatient treatment. The period of suspension shall be determined by the Board after reviewing (i) information from Pharmacists Assisting Pharmacists of Arizona ("PAPA") regarding Respondent's compliance with the terms of the PAPA program/contract; (ii) a progress report/recommendation from Respondent's PAPA counselor, which may be submitted in writing to the Board; and (iii) any input from Respondent.

B. No sooner than six (6) months from October 10, 2008, Respondent may request in writing that the Board terminate the suspension. Respondent's request to terminate suspension will be considered at the Board's next regularly scheduled Board meeting. Respondent is required to personally appear at that Board meeting.

C. Respondent shall, within ten (10) days of the effective date of this Order, return his pharmacist license to the Board office for the period of suspension.

1 D. On November 11, 2008, Respondent signed a five (5) year contract
2 with PAPA. Respondent shall abide by each and every requirement of the PAPA
3 contract. Failure to abide by the PAPA contract's terms is a violation of this
4 Order.

5 2. Upon termination of the period of suspension by the Board, Respondent's
6 reinstated license shall immediately be placed on **PROBATION**. Respondent's
7 probation is subject to the following conditions:

8 A. No sooner than five (5) years from the beginning of Respondent's
9 probationary period, Respondent shall request in writing that the Board terminate
10 his probation. Respondent's request for termination will be considered at the
11 Board's next regularly scheduled Board meeting. Respondent is required to
12 personally appear at that Board meeting. Respondent's probationary period will
13 continue until Respondent's request for termination is received and the Board
14 terminates the probation.

15 B. Respondent shall continue to comply with the terms of his PAPA
16 contract.

17 C. Respondent shall furnish all pharmacy employers with a copy of this
18 Consent Agreement. Respondent shall ensure that all pharmacy employers submit
19 to the Board a written acknowledgement that they have received a copy of this
20 Consent Agreement within ten (10) days of entering into an employment
21 relationship with Respondent.

22 D. Respondent shall not serve as a preceptor pharmacist or pharmacist
23 in charge.

24 E. Respondent shall advise the Board within ten (10) days of any
25 change in pharmacy employment status.
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1 F. Within five (5) years from the beginning of Respondent's
2 probationary period, Respondent shall complete 400 hours of community service
3 approved by Board staff. Respondent shall ensure that all entities to which he
4 provides community service verify in writing to the Board the number of hours
5 completed within 30 days of completing the community service.

6 3. Respondent shall pay all necessary fees and complete all continuing
7 education requirements throughout the term of his suspension and probation.

8 4. Throughout the term of Respondent's suspension and probation,
9 Respondent shall personally appear before the Board when requested to do so by the
10 Board or Board staff.

11 5. Respondent shall furnish the Board with a list of all jurisdictions in which
12 he maintains or has maintained licensure in the profession of pharmacy along with the
13 registration numbers of said licenses.

14 6. Respondent shall obey all federal and state laws and rules governing the
15 practice of pharmacy.

16 7. If Respondent violates this Order in any way or fails to fulfill the
17 requirements of this Order, the Board, after giving the Respondent notice and the
18 opportunity to be heard, may revoke, suspend or take other disciplinary actions against
19 Respondent's license. The issue at such a hearing will be limited solely to whether this
20 Order has been violated.

21 DATED this 7th day of MAY, 2009.

22 ARIZONA STATE BOARD OF PHARMACY

23 (Seal)

24 By: Hal Wand
25 HAL WAND, R.Ph.
26 Executive Director

1 ORIGINAL OF THE FOREGOING FILED
this 7th day of May, 2009, with:

2 Arizona State Board of Pharmacy
3 1700 West Washington, Suite 250
4 Phoenix, Arizona 85007

5 EXECUTED COPY OF THE FOREGOING MAILED
BY FIRST CLASS and CERTIFIED MAIL
this 7th day of May, 2009, to:

6 Mark McKee
7 1432 E. Glenhaven
8 Phoenix, Arizona 85008

9 EXECUTED COPY OF THE FOREGOING MAILED
this 7th day of May, 2009, to:

10 Elizabeth A. Campbell
11 Assistant Attorney General
12 1275 W. Washington Street, CIV/LES
13 Phoenix, Arizona 85007
14 Attorney for the Board

15 Barry D. Mitchell
16 Gallagher & Kennedy, P.A.
17 2575 E. Camelback Road
18 Phoenix, AZ 85016-9225
19 Attorney for Respondent

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